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SUFFOLK COUNTY CLERK
RECORDS OFFICE
RECORDING PAGE

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Type of Instrument: MORTGAGE
Number of Pages: 23
Receipt Number : 23-0048605
MORTGAGE NUMBER: DO000844

Recorded: 04/11/2023
At: 03:07:29 PM

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LIBER: M00023498
PAGE: 446

District:	Section:	Block:	Lot:
0900	134.00	02.00	014.015

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EXAMINED AND CHARGED AS FOLLOWS

Mortgage Amount: $550,000.00

Received the Following Fees For Above Instrument

		Exempt			Exempt
Page/Filing	$115.00	NO	Handling	$20.00	NO
COE	$5.00	NO	NYS SRCHG	$15.00	NO
Affidavit	$0.00	NO	Notation	$0.00	NO
Cert.Copies	$0.00	NO	RPT	$200.00	NO
RPT-MTG Fee	$200.00	NO	Mort.Basic	$2,750.00	NO
Mort.Addl	$1,620.00	NO	Mort.SplAddl	$0.00	NO
Mort.SplAsst	$1,375.00	NO			

Fees Paid $6,300.00

MORTGAGE NUMBER: DO000844

THIS PAGE IS A PART OF THE INSTRUMENT
THIS IS NOT A BILL

Vincent Puleo
County Clerk, Suffolk County

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Number of pages 23

This document will be public record. Please remove all Social Security Numbers prior to recording.

RECORDED
2023 Apr 11 03:07:29 PM
Vincent Puleo
CLERK OF
SUFFOLK COUNTY
L M00023498
P 446
D0000844

1 Deed / Mortgage Instrument	2 Deed / Mortgage Tax Stamp	Recording / Filing Stamps

3 FEES 550,000-

Page / Filing Fee	115-	Mortgage Amt.	
Handling	25.00	1. Basic Tax	
TP-584		2. Additional Tax	
Notation		Sub Total	
EA-52 17 (County)		Sub Total 135-	Spec./Assit. or Spec. /Add.
EA-5217 (State)			TOT. MTG. TAX 5745-
R.P.T.S.A.	200-		Dual Town ____ Dual County ____ Held for Appointment ____
Comm. of Ed.	5. 00		Transfer Tax
Affidavit			Mansion Tax
Certified Copy			
NYS Surcharge	15. 00	Sub Total 420-	
Other	200	Grand Total 555-	

The property covered by this mortgage is or will be improved by a one or two family dwelling only.
YES X or NO ____
If NO, see appropriate tax clause on page # ____ of this instrument.

4 Dist. 09

5033567

0900 13400 0200 014015

PTS R CWH A 12-MAR-23

Real Property Tax Service Agency Verification

15

5 Community Preservation Fund

Consideration Amount $ ____

CPF Tax Due $ ____

Improved XX

Vacant Land ____

TD 0900 ____

TD ____

TD ____

6 Satisfactions/Discharges/Releases List Property Owners Mailing Address
RECORD & RETURN TO:
Andrew S. Nachamie, P.C.
7 Smith Street
Merrick, NY 11566

Mail to: Vincent Puleo, Suffolk County Clerk
310 Center Drive, Riverhead, NY 11901
www.suffolkcountyny.gov/clerk

7 Title Company Information

Co. Name South Bay Abstract, Inc.

Title # S-18006F

8 Suffolk County Recording & Endorsement Page

This page forms part of the attached Mortgage and Security Agreement made by:
(SPECIFY TYPE OF INSTRUMENT)

Rose Way II LLC

TO

Woodmont Horn LLC

The premises herein is situated in SUFFOLK COUNTY, NEW YORK.

In the TOWN of Southampton

In the VILLAGE or HAMLET of ____

BOXES **6** THRU **8** MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

(over)

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IMPORTANT NOTICE

If the document you've just recorded is your SATISFACTION OF MORTGAGE, please be aware of the following

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If a portion of your monthly mortgage payment included your property taxes, *you will now need to contact your local Town Tax Receiver so that you may be billed directly for all future property tax statements.

Local property taxes are payable twice a year: on or before January 10th and on or before May 31st. Failure to make payments in a timely fashion could result in a penalty.

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Please contact your local Town Tax Receiver with any questions regarding property tax payment.

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Babylon Town Receiver of Taxes
200 East Sunrise Highway
North Lindenhurst, N.Y. 11757
(631) 957-3004

Brookhaven Town Receiver of Taxes
One Independence Hill
Farmingville, N.Y. 11738
(631) 451-9009

East Hampton Town Receiver of Taxes
300 Pantigo Place
East Hampton, N.Y. 11937
(631) 324-2770

Huntington Town Receiver of Taxes
100 Main Street
Huntington, N.Y. 11743
(631) 351-3217

Islip Town Receiver of Taxes
40 Nassau Avenue
Islip, N.Y. 11751
(631) 224-5580

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Riverhead Town Receiver of Taxes
200 Howell Avenue
Riverhead, N.Y. 11901
(631) 727-3200

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Shelter Island Town Receiver of Taxes
Shelter Island Town Hall
Shelter Island, N.Y. 11964
(631) 749-3338

Smithtown Town Receiver of Taxes
99 West Main Street
Smithtown, N.Y. 11787
(631) 360-7610

Southampton Town Receiver of Taxes
116 Hampton Road
Southampton, N.Y. 11968
(631) 283-6514

Southold Town Receiver of Taxes
53095 Main Street
Southold, N.Y. 11971
(631) 765-1803

Sincerely,

V Puleo

Vincent Puleo
Suffolk County Clerk

12-0104.. 06/06kd

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ROSE WAY II LLC
(Mortgagor)

to

WOODMONT HORN LLC
(Mortgagee)

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MORTGAGE AND SECURITY AGREEMENT

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Dated: JANUARY 18, 2023

Location: 114 ROSE WAY
BRIDGEHAMPTON, NEW YORK 11932

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District: 0900
Section: 134.00
Block: 02.00
Lot: 014.015
County: SUFFOLK

RECORD AND RETURN TO:
ANDREW S. NACHAMIE, P.C.
7 Smith Street
Merrick, New York 11566

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the "**Mortgage**") made the 18th day of January, 2023, between **ROSE WAY II LLC**, a limited liability company having its principal place of business at having an address at 10 Phillips Lane, Southampton, New York, 11968 (hereinafter referred to as the "**Mortgagor**"), and **WOODMONT HORN LLC**, a limited liability company having its principal place of business at 8542 Egret Meadow Lane, West Palm Beach, Florida 33412 (hereinafter, the "**Mortgagee**").

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WITNESSETH:

WHEREAS, Mortgagor is the owner of the real property and improvements thereon located at **114 ROSE WAY, BRIDGEHAMPTON, NEW YORK 11932** (the "**Property**") as more particularly described in SCHEDULE A annexed hereto and made a part hereof.

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WHEREAS, Mortgagor is the maker of that certain note of even date herewith in favor of Mortgagee (hereinafter, the "Note") in the principal sum of **FIVE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($550,000.00),** together with interest, interest and all other sums which may or shall become due under the Note or under this Mortgage;

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NOW, THEREFORE, to secure to Mortgagee (a) repayment of the debt and all renewals, modifications and extensions thereof; (b) payment of all other sums advanced in accordance with the terms of the Note or this Mortgage in order to protect the security hereof, together with interest thereon; and (c) performance of the agreements of Mortgagor contained herein, it is agreed as follows:

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FIRST: The Mortgagor does hereby mortgage, grant, convey and assign unto Mortgagee all of the right, title, interest and estate of Mortgagor, now owned, or hereafter acquired, in and to the following property, rights, interests and estates (such property, rights and interests being hereinbefore and hereinafter, collectively, the **"Premises"):**

i) the Property;

ii) all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located on the Property (hereinafter, collectively, the "Improvements");

iii) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Property and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Property, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at

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law and in equity, of Mortgagor of, in and to the Property and the Improvements and every part and parcel thereof, with the appurtenances thereto;

iv) all machinery, equipment, fixtures (including, but not limited to, all heating, air-conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Property and Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Property and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Property and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter, collectively, the "Equipment"}, and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (hereinafter, the "UCC"), superior in lien to the lien of this Mortgage;

v) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

vi) all leases and other agreements affecting the use, enjoyment or occupancy of the Property and the Improvements heretofore now or hereafter entered into (hereinafter, collectively, the "Leases") and all rents, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Property and the Improvements (hereinafter, collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

vii) all proceeds of and any unearned premiums on any insurance policies covering the Premises, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Premises; and

viii) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Premises and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property.

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Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. **DEFINITIONS.** Wherever used in this mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean "Mortgagor and/or any subsequent owner or owners of the Premises," the word "Mortgagee" shall mean "Mortgagee, its successors or assigns, or any subsequent holder or holders of this mortgage," the word "Note" shall mean "Note secured by this Mortgage," the term "Other Security Documents" shall mean all documents executed and delivered by Mortgagor securing and/or guarantying the obligations of Mortgagor to Mortgagee, other than the Note and the Mortgage, the word "person" shall mean "an individual, corporation, partnership, limited liability company or unincorporated association," and the word "Premises" shall have the meaning ascribed to it as set forth above, inducing, without limitation, the real estate described on SCHEDULE A attached hereto and made a part hereof, together with all buildings, improvements, equipment, condemnation awards and any other rights or property interest at any time made subject to the lien of this Mortgage by the terms hereof, and pronouns of any gender shall include the other gender, and either the singular or plural shall include the other. All of the terms, covenants and conditions contained in this Mortgage are hereby made part of the Note to the same extent and with the same force as if they were fully set forth therein. All of the terms, covenants and conditions contained in the Note are hereby made part of this Mortgage to the same extent and with the same force as if they were fully set forth therein. All of the terms, covenants and conditions contained in the Other Security Documents are hereby made part of this Mortgage to the same extent and with the same force as if they were fully set forth therein.

2. **CAPTIONS.** The captions at the head of each paragraph of this Mortgage are for convenience only and shall not be used to interpret, modify, or affect in any way the covenants and agreements herein contained.

3. **COMPETENCE TO EXECUTE LOAN DOCUMENTS.** Mortgagor warrants that Mortgagor has good title to the Premises and has the right to mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Premises free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever. The Mortgagor has full power and authority, and is legally competent, to execute and deliver the Note, this Mortgage, all other mortgage instruments, security agreements, and all other agreements and documents required of the Mortgagor, to the Mortgagee, and the execution and delivery of the same is not in violation of any agreement or understanding the Mortgagor may have with any person or persons. If any term, covenant or condition of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

4. **LEGAL TENDER AND JOINT AND SEVERAL LIABILITY.** The Mortgagor shall pay the indebtedness secured herein and the interest thereon in lawful money

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of the United States at the times and in the manner set forth in the Note and if the Mortgagor consists of more than one person, each such Mortgagor shall be jointly and severally liable for the performance of all covenants and agreements herein contained. Mortgagor represents, warrants and covenants that (i) there are no offsets, counterclaims or defenses against the debt, this Mortgage, the Note, or any and all other documents executed and delivered in connection therewith, and (ii) the Note, this Mortgage, and any and all other documents executed and/or delivered in connection therewith constitute valid and binding obligations of Mortgagor. Mortgagor waives presentment and demand for payment, notice of dishonor, protest and notice of protest of the Note.

5. **INSURANCE.** The Mortgagor shall keep all buildings erected on or to be erected on the Premises insured against loss by fire and such other hazards as the Mortgagee may require and the Mortgagor shall obtain and maintain insurance with respect to other insurable risks and coverage relating to the Property, including without limitation comprehensive general public liability insurance and loss of income (rent insurance or business interruption), all such insurance to be in such sums and upon such terms and conditions as the Mortgagee reasonably may require, with loss proceeds by the terms of such policies made payable to the Mortgagee as its interest may appear. All such policies shall provide for a minimum of thirty (30) days prior written cancellation notice to the Mortgagee. The Mortgagee, upon its request to the Mortgagor, shall have the custody of all such policies and all other policies which may be procured insuring said Premises, the same to be delivered, and premiums paid, to the Mortgagee at its office and all renewal policies to be delivered, premiums paid at least five (5) days before the expiration of the old policies; and the Mortgagor agrees that upon failure to maintain the insurance as above stipulated or to deliver said renewal policies as aforesaid, or to pay the premiums therefor, Mortgagee may, without obligation to do so, procure such insurance and pay the premiums therefor and all sums so expended shall immediately be paid by the Mortgagor and unless so paid, shall be deemed part of the debt secured hereby and shall bear interest at the rate set forth in the Note, and thereupon the entire principal sum unpaid, including such sums as have been paid for premiums of insurance as aforesaid, and any and all other sums which shall be payable hereunder shall become due and payable forthwith at the option of the Mortgagee, anything herein contained to the contrary notwithstanding. In case of loss and payment by any insurance company, the amount of insurance money received shall be applied either to the indebtedness secured hereby, or in rebuilding and restoring the damaged property, as the Mortgagee may elect. The provisions of Subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Mortgage.

Upon the Mortgagee's request after failure by the Mortgagor to maintain the aforementioned insurance, the Mortgagor shall pay to the Mortgagee, on the first day of the month after such request and on the first day of each month thereafter until the Note has been paid in full, one twelfth (1/12) of the yearly hazard insurance premiums, as estimated by the Mortgagee from time to time. Such sums will not bear interest and are subject to adjustment or additional payments in order to assure the Mortgagee that it will have the full amount of any payment on hand at least one (1) month prior to its due date. The Mortgagee shall hold such sum in trust to pay said insurance premiums in the manner and to the extent permitted by law when the same become due and payable each year. If the total payments made by the Mortgagor to the Mortgagee, on account of said insurance premiums up to the time when

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the same become due and payable, shall exceed the amount of payment for said insurance premiums actually made by the Mortgagee, excess shall be credited by the Mortgagee on the next subsequent payment or payments to become due from the Mortgagor to the Mortgagee on account of said insurance premiums. If, however, said payments shall not be sufficient to pay said insurance premiums when the same become due and payable, then the Mortgagor agrees to promptly pay to the Mortgagee the amount necessary to make up the deficiency upon demand by the Mortgagee. In case of default in the performance of any of the agreements or provisions contained in the Note or this Mortgage or upon any event of default therein, the Mortgagee may, at its option, at any time after such default apply the balance remaining of the sums accumulated, as a credit against the principal or the interest of the mortgage indebtedness, or both. If the Premises are sold pursuant to Section 21 hereof or if Mortgage acquires title to the Premises, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any claim to the Premises prior to such sale or acquisition.

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6. **DEMOLITION AND ALTERATION.** The Mortgagor agrees that no building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished, or materially altered, without the prior written consent of the Mortgagee, except that the Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement the Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage and Mortgagor may renovate the Premises in accordance with applicable municipal laws.

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7. **EXPENSES.** The Mortgagor will pay when due and payable all reasonable appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, court costs, and all other reasonable costs and expenses of every character which have been incurred or which may hereafter be incurred by the Mortgagee in connection with: (a) the preparation and execution of loan documents; (b) in the event an Event of Default occurs, preparation for enforcement of this Mortgage or any of its other loan documents, whether or not suit or other action is actually commenced or undertaken; (c) enforcement of this Mortgage or any other loan documents; (d) court or administrative proceedings of any kind to which the Mortgagee may be a party, either as plaintiff or defendant, by reason of the Guaranty, this Mortgage or any other instrument securing the obligations; (e) preparation for and actions taken in connection with the Mortgagee's taking possession of the Premises; (f) negotiations with the Borrower, the Mortgagor or any of their respective agents in connection with the existence or cure of any Event of Default; (g) any proposed refinancing by the Mortgagee or any other person or entity of the debt secured hereby; (h) the transfer of the Premises in lieu of foreclosure; and (i) the approval by the Mortgagee of actions taken or proposed to be taken by the Borrower, the Mortgagor or any other person or entity which approval is required by the terms of this Mortgage or any other instrument securing the Reimbursement Agreement. The Mortgagor will, upon demand by the Mortgagee, reimburse the Mortgagee for all such expenses which have been incurred or which shall be incurred by

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it. Such expenses shall be added to and constitute a portion of the debt secured by this Mortgage.

8. **TRANSFER; OTHER LIENS AND ENCUMBRANCES.** Without the prior written consent of the Mortgagee, the Mortgagor shall not sell, lease, mortgage, encumber, suffer any type of change in title or ownership, or otherwise transfer all or any part of the Premises. A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section 8 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Premises or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Premises for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any Guarantor (hereinafter defined), or any general partner of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or an interest in any entity directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which any of such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) if Mortgagor, any Guarantor or any general partner of Mortgagor or any Guarantor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner or the transfer of the partnership interest of any general partner or managing partner; and (v) if Mortgagor, any Guarantor or any member of Mortgagor or any Guarantor is a limited liability company, the change, removal or resignation of a member or manager or the transfer of an interest of any member or manager.

The Mortgagor shall keep the Premises free from mechanics' liens, materialmen's liens and encumbrances. If any prohibited lien or encumbrance is filed against the Premises, the Mortgagor shall cause the same to be removed and discharged of record within thirty (30) days after the date of filing thereof.

9. **STATEMENTS ON ENCUMBRANCE.** The Mortgagor shall obtain, upon request by the Mortgagee, from all persons hereafter having or acquiring any interest in or encumbrance on the Premises or the said equipment or accessions, a writing duly acknowledged, and stating the nature and extent of such interest or encumbrance and that the same is subordinate to this Mortgage and no offsets or defenses exist in favor thereof against this Mortgage or the Note hereby secured, and deliver such writing to the Mortgagee.

10. **REPAIRS.** The Mortgagor shall maintain the Premises in good condition and repair, shall not commit or suffer any waste of the Premises, and shall comply with or cause to be complied with, all statutes, laws, rules, ordinances and requirements of any governmental authority relating to the Premises; and the Mortgagor shall promptly repair, restore, replace or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in Paragraph 20. The Mortgagor shall complete and pay for, within a reasonable time, any structure at any time in the process of construction on the Premises; and the Mortgagor shall not initiate, join in or consent to any

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change in any private restrictive covenants, or private restrictions, limiting or defining the uses which may be made of the Premises or any part thereof, without the written consent of the Mortgagee.

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11. **INSPECTION.** The Mortgagee, and any persons authorized by the Mortgagee, shall have the right to enter and inspect the Premises at all reasonable times and upon reasonable notice to the Mortgagor.

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12. **RENTAL AND SECURITY.** Mortgagor hereby assigns to Mortgagee all leases now existing or hereafter made of all or any part of the Premises, all Rents payable under such Leases, and all security deposits made by tenants in connection with such Leases. Mortgagor hereby grants Mortgagee all of the rights and powers possessed by Mortgagor prior to such assignment, and Mortgagee is hereby granted the right to modify, extend or terminate the Leases and to execute new Leases, in Mortgagee's sole discretion. Mortgagee is hereby granted and assigned by Mortgagor the right to enter the Premises for the purpose of enforcing its interest in the Leases and the Rents, this Mortgage constituting a present, absolute assignment of the Leases and the Rents. Nevertheless, subject to the terms of this Section 12, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the debt secured by this Mortgage, for use in the payment of such sums. Upon or at any time after an event of default, the license granted to Mortgagor herein may be revoked by Mortgagee, and Mortgagee may enter upon the Premises, and collect, retain and apply the rents toward payment of the debt secured by this Mortgage in such priority and proportions as Mortgagee in its discretion shall deem proper. The Mortgagor shall not collect rent more than thirty (30) days in advance of its due date under any and all leases for any part of the Premises, without the approval of the Mortgagee herein in writing; and in the event such approval is given, the Mortgagor agrees to deposit said rents with the Mortgagee. Any and all tenant security deposits in excess of an amount equal to one month's rent under any and all leases for any part of the Premises shall be deposited and pledged so that they cannot be used by the Mortgagor without the consent of the Mortgagee, and in the event of foreclosure of this Mortgage, these deposits shall be transferred to the Mortgagee if title is acquired by the Mortgagee or to the purchaser in the event of a foreclosure sale.

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Mortgagee shall have all of the rights against lessees of the Premises set forth in Section 291-f of the Real Property Law of New York.

13. **RIGHT TO CURE.** In the event of any default in the performance of any of the Mortgagor's covenants or agreements herein, the Mortgagee may, at its option, perform the same and the cost of such performance rendered by the Mortgagee, with interest at the default rate set forth in the Note, shall immediately be due from the Mortgagor to the Mortgagee and secured by this Mortgage. Mortgagee is authorized to enter upon the Premises for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Premises or to foreclose the Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest, shall be added to and constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand.

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14. **TAXES.** The Mortgagor shall pay all taxes, assessments, sewer rents and other charges and any liens prior to the lien of this Mortgage now or hereafter assessed, or liens on or levied against the Premises or any part thereof and any tax or duty that the United States claims due with respect to this Mortgage or the Note; and in case of default in the payment thereof when the same shall be due and payable, it shall be lawful for the Mortgagee, without notice or demand, at its option, to pay the same or any of them; and the monies paid by the Mortgagee in the discharge of taxes, assessments, sewer rents and other charges and prior liens shall be a lien on the Premises added to the amount of said Note or obligation and secured by this Mortgage, payable on demand with interest at the default rate set forth in the Note, from the time of payment of the same; and upon request of the Mortgagee, the Mortgagor shall exhibit to the Mortgagee receipts for the payment of all items specified in this Paragraph prior to the date when the same shall become delinquent.

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In order to secure the performance and discharge of the Mortgagor's obligations under this Paragraph 14, but not in lieu of such obligations, and notwithstanding anything stated herein to the contrary, upon the Mortgagee's request, after failure by the Mortgagor to pay the aforementioned taxes and assessments, the Mortgagor shall pay to the Mortgagee, on the 1st day of each month thereafter, until the Note has been fully paid, a sum equal to one-twelfth (1/12) of the yearly taxes assessed against the Premises. Such sums will not bear interest and are subject to adjustment or additional payments in order to assure the Mortgagee that it will have the full amount of any payment on hand at least one month prior to its due date. The Mortgagee shall hold said sums in trust to pay said taxes in the manner and to the extent permitted by law when the same become due and payable in each year. Notwithstanding anything herein to the contrary, however, such deposits shall not be nor be deemed to be, trust funds but may be commingled with the general funds of the Mortgagee. If the total payments made by the Mortgagor to the Mortgagee, on account of said taxes up to the time when the same become due and payable, shall exceed the amount of payment for said taxes actually made by the Mortgagee, such excess shall be credited by the Mortgagee on the next subsequent payment or payments to become due from Mortgagor to the Mortgagee on account of said taxes. If, however, said payments shall not be sufficient to pay said taxes when the same become due and payable, then the Mortgagor agrees to promptly pay to the Mortgagee the amount necessary to make up the deficiency upon demand by the Mortgagee. In case of default in the performance of any of the agreements or provisions contained in the Note, the Mortgagee may, at its option, at any time after such default, apply the balance remaining of the sums accumulated, as a credit against the principal or interest of the mortgage indebtedness, or both.

Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the taxes or other charges assessed against the Premises, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Premises, or any part thereof, for real estate tax purposes by reason of this Mortgage or the debt secured thereby. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the debt secured by the Mortgage immediately due and payable.

15. **LATE CHARGE.** The Mortgagee may collect a "late charge" of five percent (5%) on any payment or installment due or required to be paid pursuant to the terms of this Mortgage or the Note which is not paid within five (5) days of when the same is required to be paid to cover the extra expenses involved in handling such delinquent payment.

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16. **PARTIAL FORECLOSURE.** The Mortgagee may, at its option, foreclose this Mortgage for any portion of the debt, or any other sums secured thereby which are then due and payable, subject to the continuing lien of this Mortgage for the balance not then due, but nothing contained in this Paragraph shall impair or affect any right or remedy which the Mortgagee might now or hereafter have, were it not for this Paragraph, but the right herein given shall be in addition to any others which the Mortgagee may have hereunder.

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17. **RECEIVER.** The Mortgagee, in any action to foreclose this Mortgage, or upon default in the observance or performance of any covenant or agreement of the Mortgagor hereunder, shall be at liberty to apply for the appointment of a receiver of the rents and profit of the Premises without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Premises as security for the amounts due the Mortgagee, or the solvency of any person or limited liability company liable for the payment of such amounts.

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18. **RIGHT TO ENTER AND POSSESS.** The Mortgagor agrees that in case of default in any of the payments required in the Note or in case of material default in any of the covenants and agreements set forth in said Note or this Mortgage, the Mortgagee is hereby authorized and empowered, by its servants, agents or attorneys, to take possession of and enter upon the Premises and to collect and receive the rents and income therefrom, and to apply so much of said rents and income as may be required in the necessary expenses of running said Premises, including reasonable attorneys' fees, management agents' fees, and if the Mortgagee manages the Premises with its own employees, an amount equal to the customary management agents' fees charged for similar property in the area where the Premises are located, and to apply the balance of said rents and income to the payment of the amounts due upon said Note, or in payment of taxes assessed against the Premises, or both. And for this purpose, and in case of such default, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee the rents and income accruing from said Premises. Nothing contained in the foregoing provisions shall impair or affect any right or remedy which the Mortgagee might now or hereafter have, were it not for such provisions, but the rights herein given shall be in addition to any others which the Mortgagee may have hereunder.

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19. **NO WAIVER, ETC.** Any failure by the Mortgagee to insist upon the strict performance by the Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof. And the Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor, of any and all of the terms and provisions of this Mortgage or the Note to be performed by the Mortgagor. Neither the Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request to the Mortgagor or any other person obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and the Mortgagee extending the time or payment or modifying the terms of the Note or this Mortgage

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without first having obtained the consent of the Mortgagor or such other persons. And in the latter event, the Mortgagor and all such other persons shall remain liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee. And regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Premises, the Mortgagee may release the obligation of any one at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for such indebtedness and may extend the time of payment or otherwise modify the terms of the Note and/or this Mortgage without, as to the security or the remainder thereof, in any way impairing or affecting the lien of this Mortgage, or the priority of such lien, as security for the repayment of such indebtedness as it may be so extended or modified, over any subordinate lien; and the holder of any subordinate lien shall have no right to terminate any lease affecting the Premises, whether or not such lease may be subordinate to this Mortgage; and the Mortgagee may resort, for the payment of the indebtedness secured hereby, to any other security therefore held by the Mortgagee in such order or manner as the Mortgagee may elect.

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Mortgagee may take action to recover the debt secured by this Mortgage, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

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20. **TAKING.** Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Premises by any public or quasipublic authority or corporation, payments shall continue as required by the Note and this Mortgage, until any such award of payment shall have been actually received by the Mortgagee and any reduction in the principal sum resulting from the application by the Mortgagee of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt. Said award or payment may, at the option of the Mortgagee, be retained and applied by the Mortgagee in part for the purpose of altering, restoring or rebuilding any part of the Premises which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Premises, or for any other purpose or object satisfactory to the Mortgagee, but the Mortgagee shall not be obligated to see to the application of any amount paid over to the Mortgagor; and if prior to the receipt by the Mortgagee of such award or payment, the Premises shall have been sold on foreclosure of this Mortgage, the Mortgagee shall have the right to receive said award of payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment of this Mortgage shall have been sought or denied, and to the extent of the reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment.

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21. **DEFAULT.** The whole of the principal sum secured herein and the interest due thereon shall become immediately due and payable without demand or notice at the option of the Mortgagee: (a) upon default in the payment of any installment of principal and/or interest under the Note; (b) upon default in the payment of any tax, sewer rent, assessment or lien for five (5) days after the same becomes due and payable; (c) upon default in keeping in force the insurance required in this Mortgage; (d) upon defaults either in delivering the policies of insurance described in this Mortgage or in paying the premiums for such insurance as provided in this Mortgage; (e) upon default in the payment of any installment, which may not then be due or delinquent, of any assessment for local improvement for which an official bill has been issued by the appropriate authorities and which may now or hereafter affect the Premises, and may be or become payable in installments; (f) if the Premises is not kept in good condition and repair or upon the actual or threatened waste, removal or demolition of or material alteration to, any part of the Premises secured by this Mortgage, except as permitted herein; (g) upon default in the observance or performance of any other material covenants, provisions or agreements of the Borrowers in the Note, any security agreement, mortgage, collateral assignment of leases and rentals, or any other instrument, document or agreement executed in connection herewith or authorizing, evidencing, guaranteeing or securing the Note; (h) the vesting of title to, or the transfer or any other disposition of any interest in, the Premises, or any part thereof, in or to anyone other than the present titleholder(s); (i) the dissolution of Mortgagor or one hundred eighty (180) days after the death of any Guarantor; j) if any leases are made, cancelled or modified, or if any rentals are prepaid for a period of more than one (1) month in advance or if any of the rents or leases are assigned without the consent of Mortgagee, except as otherwise expressly provided in this Mortgage, (k) if any representation or warranty of the Mortgagor or of any person guaranteeing payment of the Note or any portion thereof or the performance by Mortgagor of any of the terms of the Note or the Mortgage (the "Guarantor"), made herein or in any such guaranty or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note or the Mortgage or any such guaranty, shall prove false or misleading in any material respect, (l) if Mortgagor or any guarantor shall make an assignment for the benefit of creditors, (m) if a receiver, liquidator or trustee of the Mortgagor or of any guarantor shall be appointed or if the Mortgagor or any guarantor shall be adjudicated a bankrupt or insolvent or if any petition for bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Code or any similar federal or state statute shall be filed by or against the Mortgagor or any guarantor or if any proceeding for the dissolution or liquidation of the Mortgagor or of any guarantor shall be instituted and if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the Mortgagor or such guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days, (n) if Mortgagor does not reimburse Mortgagee upon demand for all expenses incurred in remedying any default of Mortgagor hereunder or in appearing in, defending or bringing any action or proceeding to protect Mortgagee's interest in the Premises, including reasonable attorneys' fees, with interest, (o) if the Premises becomes subject to (i) any tax lien which is superior to the lien of the Mortgage, other than a lien for local real estate taxes and assessments not due and payable or (ii) any mechanic's, materialman's or other lien which is or is asserted to be superior to the lien of the Mortgage and such lien shall remain undischarged for thirty (30) days, (p) if Mortgagor fails to promptly cure any violations of laws or ordinances affecting or which may be interpreted to affect the Premises, (q) if the Premises is encumbered by any mortgage lien other than the lien of this Mortgage, (r) if a default shall occur under any guaranty delivered to Mortgagee in connection the debt secured

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by this Mortgage or Mortgagor's obligations under this Mortgage, (s) upon the election by the Mortgagee to accelerate the maturity of said principal sum pursuant to the provisions of the Note or of any other instrument which may be held by the Mortgagee as additional security for the Note, or (t) upon default of any terms of any Mortgages, either superior or inferior in lien to this Mortgage.

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Upon the occurrence of any one of the foregoing events and upon Mortgagee exercising its option to declare the debt immediately due and payable by reason thereof, Mortgagor will pay from the date of that event and until the entire debt is paid in full, whether prior to or subsequent to the entry of a judgment of foreclosure and sale and the satisfaction of any deficiency judgment, interest on the unpaid principal balance of the Note at the rate of interest of twenty-four (24%) per annum or at the maximum interest rate which Mortgagor may by law pay, whichever is lower, (the "Default Rate"); provided the foregoing shall not be deemed to extend the Maturity Date.

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Notwithstanding anything to the contrary contained in the Note, this Mortgage, or any and all other documents executed and/or delivered in connection therewith, Mortgagor hereby agrees that upon its failure to pay all sums due on the Maturity Date; Mortgagor will pay to Mortgage interest on the then unpaid principal at the Default Rate from the Maturity Date and until the actual receipt and collection of all sums due Mortgagee. This charge shall be added to the principal and shall be deemed part of the debt secured by the Mortgage. This paragraph shall not be construed as an agreement or privilege to extend the Mortgage, nor as a waiver of any other right or remedy accruing to the Mortgagee by reason of any such default.

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In the event that one or more of the events of default or defaults as provided above shall occur, the remedies available to the Mortgagee include any and all rights and remedies available hereunder, and any and all rights and remedies available at law or in equity. Without limiting the forgoing, the rights and remedies available to the Mortgagee shall include, but not be limited to, any one or more of the following: (a) the Mortgagee may declare the entire unpaid balance of the Note and any other outstanding obligations owed by the Borrowers to the Mortgagee immediately due and payable without notice; (b) the Mortgagee may take immediate possession of the Premises secured by this Mortgage or any part thereof (which the Mortgagor agrees to surrender to the Mortgagee) and manage, control or lease the same to such person or persons at such rental as it may deem proper; and, with or without taking possession of the Premises, the Mortgagee may collect all the rents, issues and profits therefrom, including those past due as well as those thereafter occurring, with the right in the Mortgagee to cancel any lease, sublease, or tenancy for any cause which would entitle the Mortgagor to cancel the same; to make such expenditures for maintenance, repairs and costs of operations as it may deem advisable; and after deducting the costs therefore to apply the residue to the payment of any sums which are unpaid hereunder or under the Note. The taking of possession and/or the collections of rent under this Paragraph shall not prevent concurrent or later proceedings for the foreclosure of the Premises.

Notwithstanding anything to the contrary contained in this Mortgage, Mortgagee shall have the right to appear in, defend or bring any action or proceeding to protect its interests in the Premises or to foreclose the Mortgage or otherwise collect the debt secured thereby. The cost and expense thereof (including reasonable attorneys' fees) with interest shall be due upon

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demand from Mortgagee to Mortgagor. All such costs and expenses incurred by Mortgagee in remedying such default or in appearing in, defending or bringing any such action or proceeding shall be paid with interest at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee pursuant to the terms hereof, with interest, shall be deemed to be secured by the Mortgage.

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Notwithstanding anything to the contrary contained in this Mortgage, Mortgagee may, either with or without entry or taking possession of the Premises as provided in this Mortgage or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action for foreclosure of this Mortgage, sell the Premises or any part thereof pursuant to any procedures provided by applicable law, including, without limitation, the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in lieu thereof) and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law.

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If the Premises consists of two or more distinct parcels and this Mortgage as modified by this Agreement is foreclosed, whether pursuant to the power of sale herein granted to Mortgagee, or otherwise, the Premises, or any interest therein, may, at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner as Mortgagee may elect and specify in the notice of sale.

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If the indebtedness secured by this Mortgage is also secured by one or more other mortgages on property consisting of more than one functionally separate and distinct property and an Event of Default occurs under this Mortgage or under any such other mortgage which is cross-defaulted with this Mortgage, upon a foreclosure of this Mortgage and such other mortgages, whether pursuant to a power of sale or otherwise, the Premises, or any interest therein, and the property encumbered by such other mortgages may, at the discretion of Mortgagee, be sold in the order designated by Mortgagee in the notice of sale.

In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be occupied by Mortgagor or may require Mortgagor to vacate and surrender possession of the Premises to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

Any and all remedies available to the Mortgagee with respect to this Mortgage shall be cumulative and may be pursued consecutively or successively. No delay by the Mortgagee in exercising any such remedies shall operate as a waiver thereof or preclude the exercise thereof during the continuance of that or any subsequent default.

22. **PERFORMANCE OF LEASES.** The Mortgagor shall at all times keep, perform and observe all of the covenants, agreements, terms provisions, conditions and limitations of each lease affecting the Premises on their part to be kept, and performed

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thereunder. The Mortgagor and Guarantor shall not, without the written consent of the Mortgagee, directly or indirectly cancel, terminate or accept any surrender or modify or amend any lease affecting the Premises. Default on the part of the Mortgagor in any of the terms and provisions of any of the leases on said Premises shall constitute an event of default under the Note and under this Mortgage and the whole of said principal sum or so much thereto as shall remain unpaid shall immediately become due and payable at the option of the Mortgagee.

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23. **LEASE COVENANTS.** Each and every covenant on the part of the Mortgagor contained in any assignment of lessor's interest in leases or any assignment of rents made collateral hereto is made an obligation of the Mortgagor hereunder as if fully set forth herein.

24. **APPLICATION OF FUNDS TO CURE DEFAULT.** Upon default in any of the agreements or provisions of this Mortgage or the Note, the Mortgagee may apply any sums credited or due upon the Mortgage to the Mortgagor to cure such default without first enforcing any of the other rights of the Mortgagee against the Mortgagor or the Premises.

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25. **MARSHALLING.** The Mortgagee shall not be compelled to release, or be prevented from foreclosing or enforcing this Mortgage upon all or any part of the Premises hereby mortgaged, unless the entire debt and all items hereby secured shall be paid in lawful money as aforesaid, and shall not be required to accept any part or parts of the Premises, as distinguished from the entire whole thereof, as payment of or upon the said debt to the extent of the value of such part or parts; and shall not be compelled to accept or allow any apportionment of the said debt to or among any separate parts of the Premises.

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26. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT AND FIXTURE FILING.** This Mortgage is intended to also be a security agreement and fixture filing which is to be filed for record in the real estate records pursuant to the Uniform Commercial Code for any of the goods specified above in this Mortgage as part of the Premises which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code and Mortgagor hereby agrees to execute and deliver any additional financing statements covering said goods from time to time and in such form as Mortgagee may require to perfect a security interest with respect to said goods. Mortgagor shall pay all costs of filing such financing statements and renewals and releases thereof and shall pay all reasonable costs and expenses of any record searches for financing statements which Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created, pursuant to the Uniform Commercial Code, any other security interest in said goods, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Mortgage, including the covenants to pay when due all sums secured by this Mortgage, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies permitted by applicable law as to such goods.

As is related hereto -

Debtor is: ROSE WAY II LLC
10 Phillips Lane
Southampton, New York 11968

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Secured Party is: WOODMONT HORN LLC
8542 Egret Meadow Lane
West Palm Beach, Florida 33412

27. **EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** In the event of an enactment of any law deducting from the value of the Premises any mortgage lien thereon, or imposing upon the Mortgagee the payment of all or part of the taxes, charges or assessments previously paid by the Mortgagor pursuant to this Mortgage, or changing the law relating to the taxation of mortgages, debts secured by mortgages or the Mortgagee's interest in the Premises so as to impose new incidents of tax on the Mortgagee, then the Mortgagor shall pay such taxes or assessments or shall reimburse the Mortgagee therefor; provided that, however, if in the opinion of counsel to the Mortgagee such payment cannot lawfully be made by the Mortgagor, then the Mortgagee may, at the Mortgagee's option, declare all of the sums secured by this Mortgage to become immediately due and payable without prior notice to the Mortgagor, and the Mortgagee may invoke any remedies permitted by applicable law.

28. **USE OF PROPERTY.** Unless required by applicable law or unless the Mortgagee has otherwise agreed in writing, the Mortgagor shall not allow changes in the nature of the occupancy for which the Premises were intended at the time this Mortgage was executed. The Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Premises without the Mortgagee's prior written consent. The Mortgagor warrants and represents that its use, and the use by any of its tenants, of the Premises is in accordance and compliance with the terms and conditions of any and all rules, regulations and laws that may be applicable to the Premises, including, without limitation, all federal, state and local laws, ordinances, rules and regulations regarding hazardous and toxic materials and that the shall maintain and continue such compliance and shall require and ensure its tenants' compliance with the same. Mortgagor hereby indemnifies and holds Mortgagee free of and harmless from and against any and all claims, demands, damages or liabilities that Mortgagee may incur with regard thereto.

29. **MISCELLANEOUS PROVISIONS.** This Mortgage shall be governed by and construed under the laws of the State of New York. In the event any provision or clause of this Mortgage or the Note it secures is determined by a court of appropriate jurisdiction to be invalid and unenforceable, said determination shall not affect the validity of the remaining provisions of this Mortgage or Note to the extent they can be given effect without the invalid provision or provisions. Mortgagor, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (a) submits to personal jurisdiction in the State of New York over any suit, action or proceeding by any person arising from or relating to the Note or this Mortgage, (b) agrees that any such action, suit or proceeding may be brought in any State or Federal Court of competent jurisdiction sitting in the State of New York, (c) submits to the jurisdiction of such courts, and (d) to the fullest extent permitted by law, agrees that Mortgagor will not bring any action, suit or proceeding in any other forum (but nothing herein shall affect the right of the holder of the Note to bring any action, suit or proceeding in any other forum). Mortgagor further consents and agrees to service of any summons, complaint or other legal process in any such suit, action or proceeding by registered or certified U.S. Mail, postage

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prepaid, personal delivery or overnight delivery via a nationally recognized carrier, to Mortgagor at the address set forth on page 1 hereof, and consents and agrees that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law).

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Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Premises and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Premises. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Premises, and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Premises or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

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Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Premises and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect is interest in the Premises. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the debt, and any such subrogation rights shall constitute additional security for the payment of the debt.

30. WAIVER OF RIGHTS. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor. Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee. Mortgagor **waives diligence, demand, presentment for payment, notice of nonpayment, protest and notice of protest, and notice of any statutes of limitations, and agrees that the time for payment of amounts due under this Mortgage and the Note may be changed and extended as provided in said mortgage or any security agreement, without impairing the Mortgagor's liability thereon, and further consent to the release of all or any part of the security for the payment hereof, or the release of any party liable for this obligation without affecting the liability of the other parties hereto.**

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31. **JURY TRIAL WAIVER.** In the interest of a speedy resolution of a lawsuit which may arise hereunder, the Mortgagor and each guarantor, accommodation maker and endorser of this Mortgage waive a trial by jury in any action with respect to the transaction of which this Mortgage is a part and as to any issues in any way arising under or relating to this Mortgage. The Mortgagor acknowledges that it makes this waiver knowingly, voluntarily and only after consideration of the ramifications of this waiver by its attorney.

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32. **DOCUMENTARY STAMPS.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

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33. **USURY LAWS.** This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms of either this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

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34. **TRUST FUND.** Pursuant to Section 13 of the Lien Law of the State of New York, Mortgagor shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of the cost of any such improvement on the Premises before using any part of the total of the same for any other purpose.

35. **COMMERCIAL PROPERTY.** Mortgagor represents that

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1. [ ] The attached mortgage covers real property principally improved or to be by one or more structures containing in the aggregate not more than six (6) residential dwelling units, each having its own separate cooking facilities.

2. [X] The attached mortgage covers real property principally improved by a one- or two-family dwelling only.

3. [ ] The attached mortgage does not cover real property improved as described above.

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36. **PURPOSE OF LOAN.** Mortgagor represents and warrants that the proceeds from this Loan are to be used solely for business and commercial purposes and not at all for any personal, family, household or other noncommercial or farming or agricultural purposes. Mortgagor acknowledges that Mortgagee has made this Loan to Mortgagor in reliance upon the above representation by Mortgagor. Mortgagor agrees that the Loan is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1603, et seq. (as amended). The above representation by Mortgagor will survive the closing and repayment of the Loan.

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37. **NOTICES.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Mortgagor, the Mortgagor's successors or assigns provided for in this Agreement or in the Note or pursuant to Real Property Actions and Proceedings Law Article 14 in a proceeding to foreclose this Mortgage by power of sale shall be given in writing by mailing such notice by certified mail, return receipt requested, or by sending such notice by a recognized overnight courier with postage, freight and any other charges paid, with a receipt therefor, addressed to Mortgagor at Mortgagor's address stated herein or at such other address as Mortgagor may designate by notice to Mortgagee as provided herein, and (b) any notice to Mortgagee shall be given in writing by mailing such notice certified mail, return receipt requested, or by sending such notice by a recognized overnight courier, with postage, freight and other charges paid, with a receipt therefor, addressed to Mortgagee at Mortgagee's address stated herein or to such other address as Mortgagee may designate by notice to Mortgagor as provided herein. Except for any notice deemed under applicable law to have been given at a different time, any notice provided for in this Agreement shall be deemed to have been given to Mortgagor or Mortgagee on the earlier of (a) the second day after such notice is mailed or deposited with a courier in the manner designated herein or (b) the day such notice is actually received.

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38. **NO ORAL CHANGE.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

39. **DUPLICATE ORIGINALS.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

40. **CROSS DEFAULT.** Upon the occurrence of an Event of Default under any of the Loan Documents, Lender may at any time and from time to time exercise all or any one or more of the rights, powers, privileges and other remedies available to Lender under any of the Notes, Mortgages and/or other Loan Documents relating to any Loan, whether at law or in equity, whether or not all or any of the Loans shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Notes, Mortgages or other Loan Documents with respect to all or any of the Properties and other Collateral. Any such actions taken by Lender shall be cumulative and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of

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Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, each Borrower hereby irrevocably agrees that if an Event of Default is continuing (i) each Borrower hereby waives any "one action" or "election of remedies" law or rule to the fullest extent permitted by law, and (ii) all liens and security interests and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against all or any of the Properties encumbered by a Mortgage (including, without limitation, foreclosure of any mortgage or sale of any Property pursuant to the terms of the related Mortgage) or each of the Loans has been paid in full.

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Nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any particular Property or other Collateral for the satisfaction of any Loan in preference or priority to any other Property or other portion of the Collateral, and Lender may seek satisfaction out of each and every Property or any part thereof, or other portion of the Collateral, in its absolute discretion in respect of the Loans. In addition, Lender shall have the right from time to time to partially foreclose one or more Mortgage in any manner and for any amounts of the Loans then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event of any Event of Default caused by the failure of one or more Borrower to make one or more scheduled payments of principal and interest, Lender may enforce its remedies under one or more Mortgage against the related Properties to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loans, Lender may enforce its remedies under one or more of the Mortgage against the related Properties to recover so much of the principal balance of the Loans as Lender may elect to accelerate, and to recover such other sums secured by such Mortgages as Lender may elect. Notwithstanding one or more foreclosures or partial foreclosures, each and every Property or part thereof, not subjected to enforcement as aforesaid shall remain subject to the related Mortgage to secure payment of the outstanding portion of the Loans.

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IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage the day and year first above written.

Rose Way II LLC
By Rose Way LLC, sole member

By _____
Jonathan Bognacki, Manager

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STATE OF NEW YORK)
ss
COUNTY OF NASSAU)

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On the 18th day of January, 2023 before me, the undersigned, a notary public in and for said State, personally appeared JONATHAN BOGNACKI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

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ADAM RUBIN
STATE OF NEW YORK
NOTARY PUBLIC
Qualified in Kings County
01RU6418146
MY COMMISSION EXPIRES 06/01/2025

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SCHEDULE A

The Premises

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ALL THAT certain plot, piece or parcel of land, situate, lying and being at Mecox, Town of Southampton, Suffolk County New York, more particularly described as Lot 10 on Subdivision Map of the Zebrowski Estate filed in the Suffolk County Clerk's Office on August 5, 1983, as Map No. 7213 being more particularly bounded and described as follows:

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BEGINNING at a point on the westerly side of Rose Way distant the following 9 courses and distances from the extreme southerly terminus of a curve which curve has a radius of 25 feet and a length of 35.80 feet and connects the southerly side of Rose Way with the easterly side of Jobs Lane (Downs Lane):

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1) south 82 degrees 24' 58" east 247.43 feet;
2) south 62 degrees 25' 10" east 85.72 feet;
3) along the arc of a curve bearing in an easterly direction having a radius of 430 feet a distance of 181.99 feet;
4) south 86 degrees 39' 58" east 50 feet;
5) along the arc of a curve bearing in an easterly direction having a radius of 263 feet a distance of 169.07 feet;
6) along the arc of a curve bearing in a southerly direction having a radius of 175 feet a distance of 222.97 feet;
7) south 23 degrees 10' 02" west 59.01 feet;
8) along the arc of a curve bearing in a westerly direction having a radius of 40 feet a distance of 34.53 feet;
9) along the arc of a curve bearing in a southerly direction having a radius of 60 feet a distance of 56.98 feet to the point of beginning;

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RUNNING THENCE from the point of beginning along the westerly and southerly sides of the Rose Way cul-de-sac along the arc of a curve having a radius of 60 feet a distance of 88.43 feet;

RUNNING THENCE south 30 degrees 55' 22" west 136.29 feet;

RUNNING THENCE south 52 degrees 41' 09" west 181.62 feet;

RUNNING THENCE north 67 degrees 04' 38" west 155 feet;

RUNNING THENCE north 29 degrees 52' 43" east 336.61 feet;

RUNNING THENCE south 71 degrees 47' 19" east 165 feet to the westerly side of Rose Way the point or place of BEGINNING.